

ACTIONS ON BUILDERS' BILLS.

COLLON S. BRANSON AND GWTHER.

The following case was heard in the Court of Exchequer at Westminster Hall, on the 27th ult., before the Lord Chief Baron and a special jury.

It was an action brought by the plaintiff, a working bricklayer (*in firma pueris*) against the defendants, who are contractors on the London and North Western Railway, to recover a demand of 77l. 18s. 11d., being the balance of an account due upon a total claim of 330l. 18s. 11d., giving credit for 253l. received at various times for work and labour.

The facts of the case shewed that in the summer of 1846 the defendants having contracted with the London and North Western Railway Company for the construction of a passenger locomotive engine-house at Chalk Farm, Camden-town, according to certain plans and specifications, had entered into an engagement with the plaintiff to find the necessary labour for building and erecting a half of the same, the defendants providing the whole of the materials with which the works were to be constructed. The plaintiff was shewn the drawings and specifications, which required the facing of the brickwork to be of Suffolk bricks; four courses of brickwork in cement were to be worked at every 8 feet in height throughout, and iron-hooping to be laid longitudinally, diagonally, and transversely upon each half-brick of the thickness of the wall.

The plaintiff agreed to do the whole of the labour to the brickwork at 34s. per rod—the rubbed and gauged arches, the pointing and the cutting to plinths to be paid for extra. No agreement was signed by the plaintiff, although a letter had been drawn out by the defendants' direction, containing the heads of the terms, and shewn to the plaintiff, and not objected to by him. After he had been employed about two months on the works, during which time he had received considerable sums of money on account, the defendants, on examining the work, found that the plaintiff had been overpaid, and the plaintiff having demanded 128l. to pay his men, in addition to what had previously been paid him, the defendants determined to have the work measured up, which was done. It was then discovered that if the further sum demanded were paid, the plaintiff would be largely indebted to the defendants, and the plaintiff refusing to deliver an account shewing how the previous money had been applied, and refusing to produce his pay-sheets and time-book to satisfy the defendants that the money paid to him had been actually expended in the works, a dispute arose in consequence, and the defendants thereupon dismissed him, and took the works into their own hands; and to prevent the inconvenience that would arise from the stoppage of the works and the dissatisfaction of the plaintiff's workmen, the defendants paid the men themselves.

The case made by Mr. L. C. Hunsfrey, the plaintiff's counsel, was, that the work done by the plaintiff had been measured, and found to consist of 108½ rods, and that 40s. per rod was a fair price, including the extra in cement; the pointing, the Suffolk facing, gauged arches, iron hooping, &c., being paid for as extras; and this was supported by the evidence of two surveyors, Mr. George Spencer and Mr. John Thomas.

Mr. Martin, the defendants' counsel, contended that the plaintiff had made a contract with the defendants, which was contained in a letter drawn up for the plaintiff to sign, and which had been several times read over to him, and never objected to, engaging to do the work, including the Suffolk-brick facing, at 34s. per rod,—being paid extra for the rubbed and gauged arches, pointing and cutting to plinths; and that allowing the plaintiff liberally for these, he had been over-paid upwards of 63l., not including the sum of 95l. 15s. 6d. paid by the defendants to the plaintiff's workmen when the plaintiff was dismissed, and that the whole was a scandalous attempt to impose upon and extort money from the defendants.

Several witnesses were examined on the part of the defendants as to the contract, and to prove the fairness of the prices. Among the witnesses examined were Mr. Robert Smith, and Mr. William Wood, builders, of Birmingham; Mr. William Gardner, surveyor; and Mr. Wilkins, a sub-contractor, who proved that 34s. per rod was a fair price for reduced brickwork; and that as to the laying extra in cement, if no contract, the fair price would be 10s. per rod in addition; that as to the pointing or rake-out joints and flat-joint point, the fair price was 1d. per foot, or 9s. per 100 feet; that for Suffolk-brick facing, if no contract, 1d. per foot would be the fair price; that for gauged arches not set, 7d. per foot would be a fair price; that as to rubbed foot-lacing, set and not set, including mitres, 2d. per foot would be a fair price; and that for placing iron hooping, 12s. or 14s. per ton would be a fair price; and that it was not the practice to charge for putting up scaffolding, nor for its use by masons and other workmen, nor for sorting bricks, screening sand, or pargeting.

The Chief Baron, in summing up, told the jury,

that he had no doubt the defendants would probably have better consulted their own pockets if they had submitted to the demand made upon them, but that when persons were concerned in large works and had these demands made upon them, they were obliged to resist them for their own protection. The question was, whether the defendants resisted with the law on their side, and dealt as sensible men of business? His Lordship left it to the jury to decide whether there was a contract to do the work at a certain price? and, after adverting to the evidence of the plaintiff's witnesses, who stated that 40s. was a fair price per rod to work out the whole building, and that they had not given any distinct evidence as to the extra work and the prices for the same, and explaining to the jury the difference between measure and value, and that by which persons undertake to contract for large works, and directing their attention to the evidence on the defendants' part as to the sub-contract with the plaintiff, and the improbability of the defendants employing the plaintiff without coming to an understanding as to what he was to be paid; the terms of the contract had been reduced into writing, though not actually signed, and to which no objection was at the time made. If the jury believed there was no contract, his Lordship left it to them to contrast the evidence of the plaintiff's two surveyors, with the evidence of Mr. Wilkins, the sub-contractor, and Mr. Gardner, who stated that 34s. and the extras was a fair price. His Lordship then shewed the jury from the accounts, that, taking the contract price at 34s. per rod, a considerable sum, and much more than sufficient, was left to cover the extras of every sort, and much more than would cover all those which, according to the evidence of some of the witnesses, could be chargeable as extras, and this without reference to the payment subsequently made by the defendants to the plaintiff's workmen, which, though not strictly legal, the defendants had made from good motives, it being to their interest to see that the men who really did the work were paid.

The jury returned a verdict for the defendants.

NOTES IN THE PROVINCES.

The extensive repairs and alterations of the parish church of St. Nicholas, Great Yarmouth, are rapidly advancing towards completion. Unightly galleries and other deformities have been removed, the roofs re-decorated, the arches under the tower thrown open and restored, and the ceiling of the intersection elevated about twenty feet. High-backed, square-seated, and other pews have given place to sittings of uniform size, with much more accommodation. The amount expended exceeds 1,600l.—The ignorant advertisement "To Architects, &c.," for tenders for repairing Hinckley Church spire, according to specifications, &c., having been responded to by the proper parties, a contract, according to the *Leicester Journal*, has been entered into with Messrs. Broadbent and Co. for the work, at somewhere about 120l.—The first stone of a Presbyterian church, in Broad-street, Birmingham, is to be laid on the 24th instant.—A right resolution has been come to at Birmingham, to dispense with even the shadow of that 'charitable' principle and superintendence in the erection and inspection of model lodging-houses, which we know has, at least in some cases, worked to the prejudice, both of model lodging-houses and of model dwellings for the industrious classes, stamping them, however unjustly and erroneously, with the repulsive stigma of being only a sort of genteel poor-houses. At Birmingham, a mere matter-of-fact commercial joint-stock company is being got up, without the slightest pretension to 'charitable' motive, but, on the contrary, with its more active eye exclusively open to joint-stock profit, while its more passive fellow,—wide awake, though not so openly,—is steadily bent upon the physical advantage of its tenants, which, after all, whether among poor or rich, is the surest source of benefit to the self-interest of landlords themselves. A capital of 6,000l. in 5l. shares, for the erection of one model lodging-house is, in the first place, to be realized; and that the speculation will be not only a successful but a fructifying one, we think there can be no doubt. In the words of Prince Albert, at the recent meeting of the Society for Improving the Condition of the Labouring Classes, it "will shew to those who possess capital, that they may invest it with great advantage and profit to themselves, in consulting the conveniences dispensing comforts to their poorer brethren."—The new

approach to the ruins of Fountains Abbey, laid out according to instructions from Earl de Grey, was opened to visitors the week before last. From numerous points on this new approach, it is said that admirable views are obtained of the south facade of the abbey,—the Lady Chapel and choir, with the lancet lights and buttresses, the Norman chapter-house, the kitchen, with its curious and capacious chimney, the refectory, and beyond, the tower, and the gables and clerestory of the south transept and nave—these and other objects are all seen from different points hitherto unnoticed.

The clock tower at Evesham is to be restored; and, it is hoped, further improvements effected in the entrance to the churchyard, with its ancient gateway and its aggregation of towers and spires.—An important epoch in the history of "the workhouse," namely, the institution of farm buildings, and the still more requisite adjunct of farm fields, for the reproductive employment of the more or less able-bodied pauper, has just been ushered in at Sheffield, near which the foundation stone of "the Union Farm Building," to be erected on a piece of waste land situate at Hollow Meadows, a "wild uncultivated tract of country," was laid by the Board of Guardians on Monday week. The buildings will be capable of furnishing accommodation for about 100 men. The estimated cost of construction is 500l.; Mr. Clabrough is the contractor for the masonry work, and Mr. Fewdale for the carpentering department.—The repairs and restoration of Thornbury Church (now unroofed) are going on rapidly. The clerestory, chancel-arch, and other works, are completed.—The church at Milverton is in progress of restoration, through the exertion of the vicar, the Rev. Mr. Sotheby.

A new church for Malpas will be proceeded with shortly, a considerable fund being in course of collection. Besides a grant from the Church Building Society, Mr. Thomas Prothero, of Malpas-court, has presented 500l. and a site.—The new Unitarian Church at Gee Cross, near Stockport, opened on Wednesday week, has been erected at a cost of 8,000l. It is in the Gothic style, with a tower and spire, and stained glass windows.—A new church, called St. Matthew's, has lately been erected, and consecrated by the Bishop of Manchester, on the banks of a tributary of the river Irk, near the Chadderton corn and logwood mills. It is wholly of wood, and is fourteen yards long, by seven yards in breadth.—Some workmen in forming the main sewer in Westgate, Bradford, lately came to a flight of steps, about a yard wide, and a foot in breadth, running about nine feet below the surface, and supposed to have led down to the ancient dungeon of Bradford. The ancient market cross, according to the local *antiquary*, stood at or near the spot.—The Scarborough Parish Church Restoration Committee have accepted the estimates of Mr. Vasey, of Whitby, joiner; Messrs. Dove and Wilson, Scarborough, stonemasons; and Mr. Hornsey, Scarborough, plumber, &c. These are for the 1st and 2nd sections of the works, which will be commenced almost immediately.—The movement in reference to the line of buildings on the New Quay at Newcastle, according to the *Gateshead Observer*, is progressing. The architects, Mr. Dobson and Messrs. Green, and the engineer to the corporation, Mr. Brooks, have delivered to the New Quay Committee of the Corporation, their respective designs and elevations for the intended buildings.—The trustees of the Earl of Durham have commenced building freestone pillars for a suspension bridge across the Rector's Gill, at Bishopwearmouth, as a substitute for the ancient public road, which has been applied to railway purposes.

KEMPSEY SCHOOLS, NEAR WORCESTER.—The old school at Kempsey, a building of the fifteenth century, we believe, being much out of repair, Mr. Capel, of London, has made a gift to the parish of a new school for one hundred children, and a dwelling. Mr. Temple, of Kempsey, gave the ground. The architect appointed is Mr. John J. Cole, and the tender of Mr. Sidwell, 391l. 10s., with a separate tender for plasterers' work, 113l. 10s., making the total cost 505l., exclusive of fences and fittings, has been accepted.